IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 2171 OF 1993

Shri Narayan Rajaram Alchetty,
Occupation-service
R/at 1219 (old) 1138 (new)
Bhawani Peth, Pune ...Petitioner.
Vs.
1.Smt. Balamma Baburao Shrirekam
Occupation Household,
Residing at 1219 (old) 1138) new)
Bhawani Peth, Pune 411 o43.

2.Sou. Lalita Hanumantu Botala,
Age 32 years, Occupation Tuitions,
Residing at Same as above. ..Respondent.

Suhasini Mutalik with Mr. Jagdish Reddy for the petitioner.

None for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 15TH JULY, 2005.

ORAL JUDGMENT.

. The petitioner-landlord has invoked Article 227 of the Constitution of India, seek to challenge the concurrent findings given by the Courts below, by which his petition or suit for eviction was dismissed on all counts, including bonafide need and comparative hardship, as contemplated under the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Act). Therefore, the present petition.

2. Heard the learned Counsel, Mrs. Suhasini Mutalik, appearing for the petitioner. None appeared for respondents 1 and 2, though served. The suit premises consists of one room, admeasuring 10’ X 10’ situated on the first floor in 1219 (old) 1159 (new), Bhawani Peth, Pune. Respondent No.1 is residing in the suit premises on the monthly rent of Rs. 10/- per month. Respondent No.1 is staying alone in the suit premises. The petitioner-landlord consists more than 7 members including his one daughter and three sons. They are in possession of only two rooms. In this background, by notice dated 7/8/1987, the tenancy was terminated. On 10/9/1987 Misc. Application. No. 663/1984 was filed by the respondent for fixation of standard rent. On 13th September, 1987, the present suit in question filed in the Court of Small Cause Court, Pune, (trial Court). The parties led evidence in support of their respective cases. The learned Judge, after considering the material on record by the order dated 28/11/1989, dismissed the petitioner’s suit on all grounds i.e. defaulter, subletting, change of user, nuisance and annoyance and bonafide need. The appeal preferred by the petitioners was also dismissed by the

impugned Judgment and order dated 10th July 1992.

3. As contended, both the Courts have rejected the bonafide need of the petitioner-landlord on the ground that there was no element of "must", which is necessary for claiming the possession of the premises by the landlord. The learned Counsel appearing for the petitioner relied on **AIR 1999 SCW 3944 (Raghunath G. Panhale V. M/s Chaganlal Sundarji and Co.) and (2001) 8 S.C.C. 718 (Kempalah V. Lingalah and others).** The Apex Court in both these cases, considered the Bombay Rent Act in question. The necessary ingredients of section 13 (1) (g) of the Bombay Rent Act, and specially revolving around the terms " reasonable and bonafide requirement/ need" can be gathered from these following paragraphs;

> "The word "reasonable' connotes that the requirement or need is not fanciful or unreasonable. It cannot be a mere desire. the word 'requirement" coupled with the word reasonable means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. A reasonable and bonafide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. It may be a need in present or within reasonable proximity in the future. The use of the word "bonafide" is an additional requirement under Section 13(1)(g) and it means

> that the requirement must also be honest and not be tainted with any oblique motive."
>
> "It will be seen that the trial Court and the appellate Court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity".

4. Further from Kempaiah (Supra) para 7 and 8;

> "The terms reasonable and bonafide requirement" are complementary and supplementary to each other in the context. Dealing with a similar provision under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court in Dattatraya Laxman Kamble V. Abdul Rasul Mouali Kotkunde held that when the legislature employed the two terms together the message to be gathered is that requirement must be really genuine from any reasonable standard. Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy is governed by the rent control legislation, the court is obliged to look into the claim independently and give a specific finding in that regard."

The Apex Court’s above observation speaks for itself, no elaboration is necessary. Now the question is, if elements like or "must" or dire or absolute necessity are not always necessary to consider the bonafide need of landlord. What is necessary to consider is an honest, bonafide and reasonable requirement of the premises. In the present case, there is nothing to demonstrate that the landlord wants premises for any

oblique motive and there was no dire necessary or desire to occupy the said premises for personal occupation, as claimed. After considering the number of members of the family, it cannot be stated that there was no need of more accommodation. There is no material to raise any doubt of their reasonable and fair requirement. The presumption of bonafide need in the present case stood unrebutted. The landlord in fact filed application for bonafide use and occupation of the premises, as per the need of additional accommodation only against the tenant and not against other 11 tenants. This further justify that the landlord considered all the material aspects of the need and accommodation and restricted the case of bonafide need for the premises in question. According to me, this also an additional factor which goes in favour of the landlord.

5. The issue of comparative hardship in the present case, is quite balanced but still it also tilt in favour of the landlord, specially, in view of the above facts and circumstances of the case. However, the learned Counsel appearing for the petitioner fairly conceded that as the respondent No.1 is an old lady, aged 70 years and she is a widow and respondent No.2 is taking

care of her and as she has no alternative accommodation, they will not evict them subject to her desire to continue to stay in the said premises. So far as, other submissions are concerned, the Counsel appearing for the petitioner fairly conceded that there is no material to justify the interference with the concurrent findings given by the Courts below on all other grounds and rightly so.

6. In the light of above observation and considering the material on the record, as well as, the Apex Court's decision on the issue, according to me, a case is made out to interfere with the concurrent findings of facts. Taking into account the above observations, I am inclined to accept the submission, as made by the petitioner and as recorded above.

7. Therefore, the present writ petition is allowed. The impugned judgment, dated 10th April, 1992, passed by the appellate Court, and the Judgment dated 28/11/1989 passed by the trial Court are quashed and set aside. The suit is decreed for possession. However, decree shall not be executed till the death of respondent No.1, as discussed in para 5. Rule made absolute in terms of

prayer clause (b). No order as to cost.

[ANOOP V. MOHTA, J.]